

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
SEA LINK OF HAWAII, INC. )  
For a Temporary Rate Increase. )  

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DOCKET NO. 2008-0133

DECISION AND ORDER

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DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

PUBLIC UTILITIES  
COMMISSION

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FILED

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
SEA LINK OF HAWAII, INC. ) Docket No. 2008-0133  
For a Temporary Rate Increase. )  

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DECISION AND ORDER

By this Decision and Order, the commission approves SEA LINK OF HAWAII, INC.'s ("Applicant" or "Sea Link") Application for a General Rate Increase, filed on June 11, 2008, as supplemented on July 28, 2008.<sup>1</sup> As a result, Sea Link is authorized to implement its fuel surcharge on a permanent basis.

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<sup>1</sup>Application for a General Rate Increase; Exhibits I - K; Verification; Affidavit of Deborah Daniells, CPA; Affidavit of Judith Neustadter Naone; and Certificate of Service, filed on July 11, 2008 (collectively, "Application for a General Rate Increase"); and Supplement to Application, Revised Exhibits A, I, and K; Verification; Affidavit of Judith Neustadter Naone; Exhibit L; and Certificate of Service, filed on July 28, 2008 (collectively, "Supplement to Application").

The Parties are Sea Link and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

I.

Background

A.

Sea Link's Present Fares

Sea Link operates as a water carrier between Lahaina, Maui and Kaunakakai, Molokai. As explained by Sea Link:

Sea Link of Hawaii, Inc. started ferry service in 1986 at the request of Governor Waihee and DBED[T] to provide service between Molokai and Maui. At the time, pineapple had been phased out of Molokai and Maui had a labor shortage. Through a \$30,000 per month charter agreement with the State, Sea Link of Hawaii, Inc. agreed to transport workers at a greatly reduced rate to be shared by the employer and the employee. A side benefit was having regular service between the islands for residents and tourists on recreational trips.

In 1995, Governor Cayetano cancelled the contract forcing suspension of the service and most workers moved to Maui or quit their jobs. After two years of studies, the DOT made a request for proposals for any operators to take over the route. There were no operators willing to attempt this very marginal run. Sea Link of Hawaii, Inc. did start up again in 1995 on a limited schedule by using a smaller converted crew boat built in 1971, the Molokai Princess. At that time fuel was in the \$1 per gallon range.

Today, some eight years later, we continue to operate the same 37-year-old Molokai Princess. While small (100') and slow (17 knots), this vessel has averaged less than 1 day per year of cancellations because of weather . . . . We have always done our best to make the daily voyages as our commuting workers depend on us to get to work in the morning and to get home at night.

Application for a General Rate Increase, Exhibit J, at 1.<sup>2</sup>

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<sup>2</sup>The acronym DBEDT refers to the State of Hawaii ("State"), Department of Business Economic Development and Tourism, while the acronym DOT refers to the State Department of Transportation.

Pursuant to its Tariff No. 2, Sea Link provides transportation service to two categories of passengers: Regular Passengers and Employee Commuter Passengers.<sup>3</sup> Regular Passengers are defined as passengers who are not Employee Commuter Passengers, while Employee Commuter Passengers are defined as residents of the island of Molokai who are traveling round trip on a daily basis between the islands of Molokai and Maui for the purpose of verifiable employment.<sup>4</sup>

With respect to the pricing of Sea Link's passenger fares, Tariff No. 2 states in part:

B. PASSENGER TICKETING

a. Regular Passengers

.....

b. Employee Commuter Passengers

An Employee Commuter program for passengers between Kaunakakai and Lahaina is in effect for persons living on Molokai and commuting to work on Maui. Ticket prices for the Employee Commuter program are established by Sea Link of Hawaii . . .

..

.....

D. PASSENGER PRICE LIST

All prices are one-way, in either direction. A round trip would double the price. Food and drink are not included in the ticket price.

a. Regular Passengers

	<u>Adults</u>	<u>Children</u>
Between Kaunakakai and Molokai	\$40.00	\$20.00

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<sup>3</sup>Tariff No. 2, Section II.

<sup>4</sup>Tariff No. 2, Section II.

Coupon booklets of 6 coupons per booklet, one coupon good for passage between Kaunakakai and Lahaina, are available for purchase at \$185.00 for a booklet of 6 . . . .

b. Employee Commuter Passengers

Employees of participating employers are eligible for the Employee Commuter program. Ticket prices for Employee Commuter Passengers are established by the State of Hawaii and/or Sea Link of Hawaii and participating employers. Tickets for the Employee Commuter program will be honored only if the Employee Commuter Fare program supported by the State of Hawaii is in effect or if Sea Link of Hawaii elects to continue the program despite withdrawal of support from the State of Hawaii.

c. Taxes and Fees

There shall be added to all prices in this section of the Passenger Tariff, whether the prices are for adults, children, coupon booklets, or otherwise, Sea Link of Hawaii's pass through of gross revenue tax charges imposed on Sea Link of Hawaii by any governmental authority in any form including, but not limited to, gross excise tax and public utility fees.

E. CHILDREN

Those twelve (12) years of age or under as defined as Children. Children not accompanied by a person eighteen (18) years of age or older will not be permitted passage. Children under two (2) years of age and not occupying a seat (bab[iles in arms) will travel free.

. . . .

H. REFUNDS:

b. Employee Commuter Passengers

All purchases and refunds for Employee Commuter Passengers will be handled and determined between the Employees and their participating employers.

Tariff No. 2, Section II.

B.

Procedural Summary

By its Application for a Temporary Rate Increase, filed on June 30, 2008, Sea Link sought to revise its Tariff No. 2 by establishing and assessing a temporary fuel surcharge.<sup>5</sup> On July 11, 2008, Sea Link filed its Application for a General Rate Increase, seeking to establish and assess on a permanent basis its requested fuel surcharge. On July 22, 2008, the Consumer Advocate filed its Statement of Position.<sup>6</sup> The Consumer Advocate, in its Statement of Position, addressed Sea Link's request to implement its proposed fuel surcharge on a temporary and permanent basis. On July 28, 2008, Sea Link filed its Supplement to Application.

By Order dated August 1, 2008, the commission approved Sea Link's Application for a Temporary Rate Increase, subject to certain conditions.<sup>7</sup> As a result, the commission authorized Sea Link to establish and assess its proposed temporary fuel surcharge, until further order of the commission. On August 6, 2008, Sea Link filed its revised tariff sheets,

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<sup>5</sup>Application for a Temporary Rate Increase; Exhibits A - H; Verification; Affidavit of Deborah Daniells, CPA; Affidavit of Judith Neustadter Naone, Esq.; and Certificate of Service, filed on June 30, 2008 (collectively, "Application for a Temporary Rate Increase"); see also Commission's letter, dated July 2, 2008; Sea Link's letter, dated July 8, 2008; Commission's letter, dated July 11, 2008; Sea Link's letter, dated July 14, 2008; and Commission's letter, dated July 21, 2008.

<sup>6</sup>Consumer Advocate's Statement of Position; Exhibit A; and Certificate of Service, filed on July 22, 2008 ("Statement of Position").

<sup>7</sup>Order Approving Temporary Fuel Surcharge, filed on August 1, 2008.

which incorporate the temporary fuel surcharge approved by the commission.<sup>8</sup>

By Order dated August 7, 2008, the commission suspended Sea Link's Application for a General Rate Increase, and opened an investigation to examine the merits of Sea Link's request to implement its fuel surcharge on a permanent basis.<sup>9</sup> The commission, in its Order, stated its intent to hold public meetings on the islands of Molokai and Maui for the purpose of providing interested persons with the opportunity to comment on Sea Link's request to implement its temporary fuel surcharge on a permanent basis.

Public meetings were held by the commission on August 27 and 28, 2008, in Kaunakakai, Molokai, and Kahului, Maui, respectively.<sup>10</sup> Representatives from Sea Link and the Consumer Advocate appeared and testified at both public meetings.

Sea Link responded to the commission's information requests on August 19, 27, and September 22, 2008.

### C.

#### Temporary Fuel Surcharge

Sea Link's temporary fuel surcharge, as approved by the commission, is set forth in its Revised Tariff, filed on

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<sup>8</sup>Sea Link's Revised Tariff, filed on August 6, 2008. On August 15, 2008, Sea Link implemented its temporary fuel surcharge. See Sea Link's transmittal letter, dated August 7, 2008, enclosing a copy of Sea Link's notice to its customers, dated August 4, 2008.

<sup>9</sup>Order Suspending Application for a General Rate Increase, filed on August 7, 2008.

<sup>10</sup>See Notice of Public Meetings.

August 6, 2008. Sea Link represents that its temporary fuel surcharge is identical to the fuel surcharge Hawaii Superferry, Inc. is authorized to assess by the commission.

In its Application for a Temporary Rate Increase, Sea Link stated that "[t]he fuel surcharge would apply to all tickets, and all applicable taxes and fees will be assessed on the fuel surcharge."<sup>11</sup> However, in its Application for a General Rate Increase, Sea Link clarified that "[t]he fuel surcharge would apply to all tickets, except commuter program tickets, and all applicable taxes and fees will be assessed on the fuel surcharge."<sup>12</sup> With respect to the non-assessment of the proposed fuel surcharge on tickets for the Employee Commuter Program, Sea Link explained:

Although [Sea Link] wants to retain its discretion regarding the discounted fares offered to participants in the employee commuter program, [Sea Link] at this time is not seeking the authority to assess a fuel surcharge to the substantially discounted fare offered to those residents of Molokai participating in the employee commuter program.

Application for a General Rate Increase, at 2 n.1.

Meanwhile, Revised Exhibit I of Sea Link's Application for a General Rate Increase, and Exhibits M and N of the water carrier's response to PUC-IR-101, set forth the specific amounts of the temporary fuel surcharge, which are dependent upon Sea Link's price per gallon of fuel. In essence,

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<sup>11</sup>Application for a Temporary Rate Increase, at 2.

<sup>12</sup>Application for a General Rate Increase, at 3; and Sea Link's response to PUC-IR-103.

Sea Link utilizes the 1998 benchmark price of \$1.00 per gallon for fuel, with a "2% increase in the price per ticket for each 10% increase, or portion thereof, in the cost of fuel above the benchmark price of \$1 per gallon."<sup>13</sup>

D.

Public Comments

In addition to representatives from Sea Link and the Consumer Advocate, five individuals from the general public appeared and testified at the Molokai public meeting, while no one from the general public testified at the Maui public meeting.<sup>14</sup> Written comments were also sent to the commission by electronic mail.<sup>15</sup>

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<sup>13</sup>Revised Exhibit I of Sea Link's Application for a General Rate Increase, at 1; and Exhibits M and N of Sea Link's response to PUC-IR-101, at 1. By a specific example, Sea Link explains that its Regular Passenger one-day ticket is \$40, and for each ten percent increase, or a portion thereof, in the cost of fuel from the \$1 per gallon benchmark, there will be a two percent increase in the fuel surcharge. Thus, with fuel costs at approximately \$4.25 per gallon (representing a sixty-five percent increase), the fuel surcharge will be \$26 for a Regular Passenger one-way ticket. See Revised Exhibit K of Supplement to Application; and Sea Link's notice to its customers, dated August 4, 2008.

<sup>14</sup>At the August 27, 2008 public meeting, Sea Link, as part of its testimony, submitted a written petition signed by approximately 139 Molokai residents, supporting: (1) an adjustable fuel surcharge to allow the ferry to continue in operation; and (2) funding from the state or county governments to subsidize Molokai residents who work on Maui, similar to the state program instituted in 1987.

<sup>15</sup>See electronic mail enclosures to the Commission's transmittal letter, dated September 2, 2008.

Two areas of concern were expressed by members of the general public at the Molokai public meeting.<sup>16</sup> Ultimately, Sea Link resolved the concern regarding the assessment of the fuel surcharge upon a commuter who had purchased coupon booklets before Sea Link began to implement the fuel surcharge,<sup>17</sup> while the other concern regarding the eligibility criteria under the Employee Commuter Program is subject to further commission review and action.<sup>18</sup>

## II.

### Discussion

HRS § 271G-16 provides in relevant part:

**Rates, fares and charges of common carriers by water.** (a) It shall be the duty of every water carrier of passengers to provide safe and adequate service, equipment, and facilities for the transportation of passengers and to establish, observe, and enforce just and reasonable rates, fares, and charges, and just and reasonable regulations and practices relating thereto, and to the issuance, form, and substance of tickets, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the transportation of passengers.

(b) It shall be the duty of every water carrier of property to provide safe and adequate service, equipment, and facilities for the transportation of property and to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto, and to the manner and method of

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<sup>16</sup>See also electronic mail enclosures to the Commission's transmittal letter, dated September 2, 2008.

<sup>17</sup>See Sea Link's response to PUC-IR-402.

<sup>18</sup>See Section II.B of this Decision and Order, below.

presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property.

(c) All charges made for any service rendered by any water carrier in the transportation of passengers or property or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any water carrier to make, give, or cause any undue or unreasonable preference or advantage to any particular person, locality, region, district, island, or description of traffic, in any respect whatsoever; or to subject any particular person, locality, region, district, island, or description of traffic to any unjust discrimination or undue or unreasonable prejudice or disadvantage in any respect whatsoever; provided that this subsection shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

(d) Any person or body politic may make complaint in writing to the commission that any such rate, fare, charge, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the commission shall be of the opinion that any individual rate, fare, or charge, demand, charged, or collected by any common carrier or carriers by water for transportation, or any rule, regulation, or practice whatsoever of the carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful rule, regulation, or practice thereafter to be made effective.

(e) In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transportation of passengers or property by water carriers, and to prescribe classifications, regulations, and practices relating thereto, the commission shall give due consideration, among other factors, to the

effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by the carriers at the lowest cost consistent with the furnishing of the service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide the service.

(f) Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith.

HRS § 271G-16.

HRS § 271G-17 states in relevant part:

**Tariffs of water carriers.** (a) Every water carrier shall file with the public utilities commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property. The rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information as the commission by regulations shall prescribe; and the commission may reject any tariff filed with it which is not in consonance with this section and with the regulations. Any tariff so rejected by the commission shall be void and its use shall be unlawful.

(b) No change shall be made in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting the rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a water carrier, except after forty-five days' notice of the proposed change filed and posted in accordance with subsection (a); provided that changes to a fuel surcharge approved by the commission may be made after thirty days' notice of the proposed change filed and posted in accordance with subsection (a). The notice shall plainly state the change proposed to be made and the time when it will take effect. The commission may in its discretion and for good cause shown allow the change upon notice less than that herein specified or modify the requirements

of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(c) No water carrier shall engage in the transportation of passengers or property unless the rates, fares, and charges upon which the same are transported by the carrier have been filed and published in accordance with this chapter.

(d) Whenever there is filed with the commission any schedule stating a new rate, fare, or charge, for the transportation of passengers or property by a water carrier or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the carrier may on its own initiative, or shall by order of the commission served prior to the effective date of the schedule, concurrently file a pro forma statement of account which shall be prepared under the same form and in the same manner as prescribed by the commission's uniform system of accounts.

The commission may upon complaint of any interested person or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, enter upon a hearing concerning the lawfulness of the rate, fare, or charge, or the rule, regulation, or practice, and pending the hearing and the decision thereon the commission, by delivering to the carrier or carriers affected thereby a statement in writing of its reasons therefor, may suspend the operation of the schedule and defer the use of the rate, fare, or charge, or the rule, regulation or practice. From the date of ordering a hearing to investigate the lawfulness of the rate, fare, or charge, the commission shall have up to six months to complete its investigation. If the commission fails to issue a final order within the six-month period then the changes proposed by the carrier shall go into effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice, is just and reasonable.

(e) When a rate increase application is filed, the commission may in its discretion and after public notice, and upon showing by a water carrier of probable entitlement and financial need, authorize temporary increase in rates, fares, and charges; provided that the commission shall by order require the carrier to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision by further order require the interested carrier to refund, with interest, to the person in whose behalf such amounts were paid, such portion of such increased rates or charges by its decision shall be found not justified. The interest to be paid shall be the rate of return authorized in the last general rate case proceedings.

HRS § 271G-17.

A.

Permanent Fuel Surcharge

The commission, based on Sea Link's unstable financial condition, attributable to a large extent to the recent and rapid increase in the water carrier's fuel costs, together with its potential abandonment of service due to its negative operating income, found that Sea Link was probably entitled to an increase in its rates, in the form of a temporary fuel surcharge.<sup>19</sup> Updated data submitted by Sea Link confirms the recent and rapid increase in the water carrier's fuel costs.<sup>20</sup>

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<sup>19</sup>See Order Approving Temporary Fuel Surcharge, filed on August 1, 2008.

<sup>20</sup>See Exhibit O of Sea Link's response to PUC-IR-201 (Sea Link's average per gallon diesel fuel prices for the period from July 2007 to July 2008); see also Order Approving Temporary Fuel Surcharge, filed on August 1, 2008, Section I.D, at 7-10 (discussing Sea Link's position).

The temporary fuel surcharge, moreover, is virtually identical to the fuel surcharge Hawaii Superferry, Inc. is authorized to assess by the commission.<sup>21</sup> Lastly, the Consumer Advocate is on record as supporting "Sea Link's request for temporary and general rate increase on an expeditious basis."<sup>22</sup>

The commission finds that Sea Link's request to implement its temporary fuel surcharge on a permanent basis appears just and reasonable under the circumstances. Accordingly, the commission approves Sea Link's Application for a General Rate Increase. Sea Link shall promptly submit its revised tariff sheets, with the applicable issued and effective dates, that incorporate its permanent fuel surcharge approved by the commission herein. Its revised tariff sheets shall also disclose the fare prices charged by Sea Link under

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Asked to explain its efforts in seeking operational and fuel efficiencies as part of its regulated operations, Sea Link responded:

Applicant seeks to be efficient with its operations and its fuel. Applicant suspended a voyage that had low ridership (Sunday a.m.). Applicant reduces its main engine power settings when possible. Applicant continues to explore fuel efficient replacement vessel opportunities.

Sea Link's response to PUC-IR-202.

<sup>21</sup>See Hawaii Superferry, Inc.'s Tariff No. 1A, Section II.E, Fuel Surcharge.

<sup>22</sup>Consumer Advocate's Statement of Position, at 30; see Order Approving Temporary Fuel Surcharge, filed on August 1, 2008, Section I.E, at 10-15 (discussing the Consumer Advocate's position); and the Consumer Advocate's written comments presented at the August 27 and 28, 2008, public meetings.

the Employee Commuter Program.<sup>23</sup> Finally, Sea Link, as a non-docketed notice filing, shall file at the beginning of each month, the calculation of its new monthly fuel surcharge.<sup>24</sup> This non-docketed, monthly notice filing will assist the commission in responding to inquiries and concerns from the general public on how the fuel surcharge is calculated and the amount of the fuel surcharge at a particular point in time.

B.

Employee Commuter Program

Pursuant to Sea Link's Tariff No. 2: (1) Employee Commuter Passengers are defined as residents of the island of Molokai who are traveling round trip on a daily basis between the islands of Molokai and Maui for the purpose of verifiable employment; and (2) employees of participating employers are eligible for the Employee Commuter Program. Sea Link presently charges \$25 per round trip fare under the Employee Commuter Program).<sup>25</sup>

The Employee Commuter Program traces its inception to the subsidy Sea Link received from the State for transporting Molokai residents to Maui for employment purposes at a discounted rate, from 1986 to 1995, when the subsidy was

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<sup>23</sup>Contrary to HRS § 271G-17(a), Sea Link's current tariff does not disclose the fare prices charged by Sea Link under the Employee Commuter Program. See PUC-IR-102; see also Sea Link's response to PUC-IR-102 (Sea Link presently charges \$25 per round trip fare under the Employee Commuter Program).

<sup>24</sup>The commission recently subjected Hawaii Superferry, Inc. to this same requirement for its fuel surcharge.

<sup>25</sup>See Sea Link's response to PUC-IR-102.

terminated by the State. It appears that Sea Link has continued to offer a discounted rate to Employee Commuter Passengers, pursuant to its Tariff No. 2.<sup>26</sup>

The absence of specific and clear eligibility criteria (i.e., terms and conditions) for the Employee Commuter Program in Sea Link's tariff is a continuing concern for the commission. While its Tariff No. 2 defines Employee Commuter Passengers as commuters who travel round trip on a daily basis between the islands of Molokai and Maui for the purpose of verifiable employment, Sea Link is on record as stating that only full-time employees who travel four or more days per week are eligible for the Employee Commuter Program.<sup>27</sup> The four or more travel days per week criteria (which is not specified in Sea Link's current tariff) was a matter of concern that was raised by a full-time State firefighter who resides on Molokai but works on Maui, and

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<sup>26</sup>According to Sea Link:

Applicant urges the Commission to recognize that it has voluntarily continued to provide ferry service to qualified Molokai residents for many years despite the State of Hawaii having stopped providing a substantial subsidy for this program. So long as Applicant is financially capable of doing so, Applicant intends to continue offering this important service to members of the community it serves and to members of the community in which its owners and employees themselves live and work.

Sea Link's response to PUC-IR-403. From the docket record, it appears that employers have the option of paying for all or a portion of the discounted rate on behalf of their employees.

<sup>27</sup>Sea Link's oral testimony at the August 27 and 28, 2008 public meetings; and Sea Link's response to PUC-IR-403.

due to his employment schedule as a firefighter, does not meet the "average 4 times a week usage" criteria imposed by Sea Link.<sup>28</sup>

The commission recognizes Sea Link's difficulty in "drawing the line" and minimizing the potential for abuse from passengers who seek the discounted rate but are not necessarily traveling to Maui for "verifiable" full-time employment. Nonetheless, in the commission's view, the full-time State firefighter appears to meet the spirit and intent of the Employee Commuter Program of providing Molokai residents who work full-time on Maui with a discounted rate in order to provide Molokai residents with "verifiable" full-time employment opportunities on the island of Maui.

Given the absence of specific and clear eligibility criteria for the Employee Commuter Program in Sea Link's tariff, the commission hereby instructs Sea Link to collaborate with the Consumer Advocate for the purpose of providing input on revised tariff language for the Employee Commuter Program, consistent with the public interest. Sea Link shall file its proposed revised tariff sheets for the commission's review and approval.

C.

2007 Annual Financial Report

Sea Link is delinquent in the filing of its 2007 Annual Financial Report. Sea Link is instructed to file its 2007 Annual Financial Report.

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<sup>28</sup>Oral testimony at the August 28, 2008, Molokai public meeting; and electronic mail comments, dated August 27, 2008.

III.

Orders

THE COMMISSION ORDERS:

1. Sea Link's Application for a General Rate Increase, filed on July 11, 2008, as supplemented, is approved.

2. Sea Link is authorized to establish and assess its fuel surcharge on a permanent basis, effective from the date of this Decision and Order, as set forth in its Application for a General Rate Increase, which exempts from the fuel surcharge Employee Commuter Passengers, as that term is defined in Tariff No. 2.

3. By October 29, 2008, Sea Link shall submit its revised tariff sheets, with the applicable issued and effective dates, that incorporate: (A) its permanent fuel surcharge approved by the commission herein; and (B) the fare charged by Sea Link under the Employee Commuter Program.

4. Sea Link, as a non-docketed notice filing, shall file at the beginning of each month, beginning from November 3, 2008, the calculation and amount of its new monthly fuel surcharge. Copies of Sea Link's monthly filing shall be served upon the Consumer Advocate.

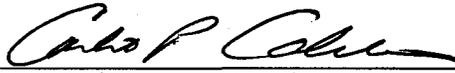
5. Sea Link shall confer with the Consumer Advocate for the purpose of providing input on revised tariff language for the Employee Commuter Program, consistent with the public interest. By November 21, 2008, Sea Link shall file its proposed revised tariff sheets for the commission's review and approval.

6. By October 29, 2008, Sea Link shall file its delinquent 2007 Annual Financial Report.

7. The failure to comply with Ordering Paragraphs Nos. 3 - 6, above, may constitute cause to void this Decision and Order, and may result in further regulatory action as authorized by State law.

DONE at Honolulu, Hawaii OCT 17 2008.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By:   
Carlito P. Caliboso, Chairman

By:   
John E. Cole, Commissioner

By:   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Michael Azama  
Commission Counsel

2008-0133.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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Counsel for SEA LINK OF HAWAII, INC.